beyond the jurisdiction of a Magistrate, since the maximum punishment is seven years. The second branch, however, deals with giving false evidence in any other case, which by reason of its maximum punishment of 3 years is clearly falling under the jurisdiction of a Magistrate."

That is a perfectly correct statement of the law.

He then goes on to say, however :—

"Whether or not I have jurisdiction to try the present case depends upon whether or not a statement made to Police Officer investigating into Manek Urai Report No. 43/55 can be so interpreted as to amount to giving false evidence in any stage of a judicial proceeding. If so, the trial of the present case is totally void *ab initio* for lack of jurisdiction."

The learned Magistrate then goes on to hold, perfectly correctly, that a false statement given in the course of a Police investigation under section 112 of the Criminal Procedure Code is quite distinct from false evidence given "in any stage of a judicial proceeding". He therefore held that the case fell within the second branch of the section involving a maximum punishment of three years' imprisonment and that he, accordingly, had jurisdiction to try the case.

The fallacy of his reasoning lies, however, in the fact that the issue of jurisdiction is one that must be decided on the face of the charge as it stands before the Magistrate. On the face of the charge before the Magistrate, clearly, the respondent had either lied in the course of the Police investigation or perjured himself at the trial before the Magistrate. If the latter, then he was liable to a maximum of seven years' imprisonment, which was outside the jurisdiction of the Magistrate. Clearly, that issue could not be decided until the evidence was heard. On the face of the charge, therefore, the learned Magistrate had no jurisdiction to try the case.

The logical necessity for a Magistrate to decide the issue of jurisdiction on the face of the charge, and before entering into the evidence, is really obvious, and this case provides an admirable illustration for it. Having embarked upon the trial, if the learned Magistrate had come to the conclusion that the statement of the respondent to the Police was true and that his testimony before the Magistrate at the trial was false, he would then have found in the position of deciding that he had no jurisdiction to try the case because it involved a maximum punishment of seven years' imprisonment.

For these reasons I am of the opinion that the trial was a nullity. The learned Magistrate imposed a fine of $50. It is to be observed that, upon conviction for an offence under this section, *some* term of imprisonment is mandatory — unless, of course, the provisions of section 173A or 294 of the Criminal Procedure Code are resorted to.

The conviction and sentence is accordingly set aside, and I direct that the case be sent back for trial by the learned President of the Sessions Court.

Re-trial ordered.

BACHAN SINGH v. MAHINDER KAUR & ORS.

[O.C.J. (Thomson J.) February 7, 1956]

[Ipoh — Originating Summons No. 134 of 1954]

Land Code (Cap. 138), s. 240 — Effect of unregistered transfer of land.

On a valid transfer of property capable of registration under the terms of the Land Code, the purchaser acquires a right in personam to the land which he is entitled to have erected into a right *in rem* by registration. In this case the transfer could not be registered as (a) there had been delay and (b) one of the original transferors had died. The applicant in this case applied to the Court to exercise its powers under s.240 of the Land Code and an order was made under the same section addressed to the Registrar of Titles to the effect that the applicant be registered as proprietor in respect of a share in the land in question.

Cases referred to :—

(1) *Loke Yew v. Port Swettenham Rubber Co.* (1913) A.C. 491; Innes 202.

(2) *Haji Abdul Rahman & Anor. v. Mohamed Hassan* (1917) A.C. 209; 1 F.M.S.L.R. 290.

ORIGINATING SUMMONS.

H. T. Ong for the applicant.

K. C. Chan for the 1st respondent.

Thomson J. (delivering oral judgment) : — In discussing this case I wish to avoid as far as possible the technicalities of the English law relating to trusts and equitable interests.

I do not think I am overlooking anything that was said in the *Port Swettenham Rubber Company* case[1] or *Abdul Rahman's* case[2]. I feel compelled, however, to observe that in my experience a great deal of the difficulty and confusion which sometimes attend actions relating to land in this country arise from the no doubt well-intentioned efforts of counsel to force our local law into conformity with conceptions of the English law which really have very little relevance.

To my mind, many of the difficulties which appear to arise in these cases would not arise if we were to bear in mind throughout the distinction between rights

ad rem or personal rights and rights *in rem* or real rights. Where there is a valid binding contract for the sale of land, the purchaser, when he has performed his side of the contract, acquires a right *ad rem* which is also a right *in personam*. In other words, he acquires a right to the land as against the vendor personally but not good against the world as a whole and, in due course, that right can become a real right good against the world as a whole on registration in accordance with the Land Code which has the same effect in our law as appearance before the Praetor in the law of Rome, delivery of seisin in the old English feudal law and infeftment by registration in the Register of Sasines in the modern Scots law.

Now, these observations are not academic. They are made to remind myself and to remind counsel of something we all know but are apt to overlook and which is a consideration in the light of which we must consider the particular transaction with which I am concerned in this case.

On the face of it the original transfer by the respondent must be regarded, as must every transfer in the statutory form, as *prima facie* evidence of an antecedent oral contract to sell the land.

In the present case, the respondent has said that any such contract was void and unenforceable because it was induced by duress. I have considered the respondent's evidence on this point and I am not prepared to accept it. She said her husband was aware of the facts which she said amounted to duress. But although it was admitted that the husband was available he was not called as a witness. Moreover, she said that almost immediately she went out of possession in favour of one of the purchasers. And yet for a period of ten years she has made no attempt whatsoever to regain possession.

I must, therefore, hold that the antecedent contract was a binding contract.

Under that contract her obligation was to execute a valid transfer capable of registration in terms of the Land Code. At or about the time of the contract she did all that was required of her. That has not turned out to be sufficient but I do not think I need discuss the point because no demand has been made upon her that she should do anything further.

Nevertheless, the point is that when that contract was made the purchasers acquired a right *ad rem* and *in personam* to the land which so far as the vendor was concerned they were entitled to have erected into a real right. I am not prepared to say that that amounted to an equitable right. I prefer to regard it as a legal right of the nature of a *chose in action*.

Subsequently, and I think the process of devolution is clear, the power to deal with these personal rights of three of the purchasers has passed to the present applicant and I can see nothing in the wording of the second Power of Attorney (which is the one in his favour) which in any way restrains his power to deal with these rights. If he wishes to deal with these rights by vesting them in or rather transferring them to himself and taking the necessary step to convert them into real rights he is entitled to do so. He is, however, unable to do so for technical reasons which are abundantly clear — the failure to register timeously the original transfer and the death of one of the parties from whom his authority ultimately flows. It seems to me that what he is doing here is to invoke the powers given to the Court by section 240 of the Land Code to enable him to surmount these technical difficulties.

Something has been made of section 183 of the Contract Ordinance. Quite frankly, I fail to appreciate the force of that argument. It may be that the applicant might have proceeded by some sort of action in contract; it may be if he had done so that section would have had some application, though I have very grave doubts on the point. But he has not proceeded by way of any sort of action in contract. He has proceeded by way of invoking the powers of the Court under section 240 of the Land Code to enable him to do something which, to my mind, he is fully entitled to do.

In the circumstances, I see no reason why he should not have an order under section 240 of the Land Code addressed to the Registrar of Titles to the effect that the applicant be registered as proprietor in respect of a 30/147 undivided shares in the land in question.

There may be some question of payment on transfer duty but I do not think that is for me to deal with at this stage. In the first instance it is for the Registrar to deal with. I have no doubt if there is any difference between the Registrar and the applicant on the point it will be brought before me in appropriate proceedings.

As regards costs, although the first respondent has failed, I am not at all satisfied that she should pay all the costs of the application because on the view the applicant took of his position (which I consider to have been a perfectly proper view) some application to the Court was necessary.

The order I am going to make is that the first respondent pays the applicant the taxed costs of the proceedings subsequent to the service on her of the Originating Summons.

Order accordingly.

Solicitors: *Cheang Lee & Ong; K. C. Chan.*